

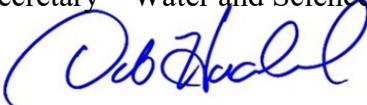


THE SECRETARY OF THE INTERIOR
WASHINGTON

DEC 15 2022

Memorandum

To: Assistant Secretary for Fish and Wildlife and Parks
Assistant Secretary – Water and Science

From: Secretary 

Subject: Prior Direction on Implementation of the Central Valley Project Improvement Act

Introduction

Secretary David Bernhardt issued a concurrence memorandum on January 19, 2021, regarding activities and collection actions under the Central Valley Project Improvement Act (CVPIA). The legal analysis supporting that memorandum was withdrawn on June 11, 2021. To clarify that Secretary Bernhardt's concurrence memorandum has no further force or effect, this memorandum withdraws the Bernhardt memorandum, its associated directives, and any supporting documents.

Background

On January 14, 2021, the Associate Solicitor for the Division of Water Resources provided a memorandum to the Bureau of Reclamation's (Reclamation) Regional Director for the California-Great Basin Region related to the implementation of the CVPIA. In that memorandum, the Associate Solicitor interpreted certain provisions of the CVPIA and made a finding that most of the program activities called for in the CVPIA had been completed for purposes of establishing collections from water and power customers for funding the Central Valley Project (CVP) Restoration Fund. Subsequently, on January 15, 2021, the Assistant Secretary for Fish and Wildlife and Parks and the Assistant Secretary – Water and Science provided the Associate Solicitor's memorandum to Secretary Bernhardt asking for his direction on next steps to implement the Associate Solicitor's advice. On January 19, 2021, Secretary Bernhardt replied to the Assistant Secretaries that he agreed with the findings of the Associate Solicitor's memorandum and directed the Assistant Secretaries to undertake additional review to better understand the impact of implementing the Associate Solicitor's advice.

Review

At the start of the Biden-Harris administration, President Biden issued Executive order 13990 (Order), directing that agency heads “review all existing regulations, orders, guidance documents, policies, and any other similar agency actions (agency actions) promulgated, issued, or adopted between January 20, 2017, and January 20, 2021” and “the heads of agencies shall, as

appropriate and consistent with applicable law, consider suspending, revising, or rescinding the agency actions.”

In accordance with that Order, the Associate Solicitor’s memorandum was reviewed, and a determination was made to rescind it. The Deputy Solicitor for Water Resources issued a memorandum on June 11, 2021, withdrawing the Associate Solicitor’s memorandum based on a finding that it lacked proper Departmental coordination and that it was a potential impediment to achieving the purposes of the CVPIA.

In light of the Deputy Solicitor’s action, I find that there is no longer any basis for Secretary Bernhardt’s concurrence and direction for further review of this issue. Further, having reviewed the Associate Solicitor’s memorandum and the 2009 Central Valley Project Improvement Act Program Activity Report (CPAR), I find that the CPAR generally represents the most appropriate current view regarding determinations related to “completion” as required by CVPIA § 3407(d)(2)(A). More importantly, the CVPIA is an invaluable authority that puts fish and wildlife purposes on par with other CVP project purposes. The CVPIA gives Reclamation the tools necessary to do the important work of restoring the fish and wildlife resources of the Trinity River and the Central Valley. I am therefore rescinding any advice or direction that may fall short of expressing the Department of the Interior’s commitment to the protection of the fish, wildlife, and habitat affected by CVP operations.

Conclusion

Accordingly, I hereby withdraw Secretary Bernhardt’s concurrence memorandum and direct the Assistant Secretary for Fish and Wildlife and Parks and the Assistant Secretary – Water and Science to take no further action on this issue. I disagree with the conclusions in the withdrawn Associate Solicitor’s memorandum and in Secretary Bernhardt’s memorandum supporting those conclusions. Those memoranda are invalid and have no further force or effect. Reclamation shall continue to collect the full mitigation and restoration charges from water and power contracts as directed by the CVPIA and continue to take actions to support restoration and enhancement of the CVP’s natural environment.